Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Global NAPs South, Inc. Petition for	)	
Preemption of the Jurisdiction of the Virginia	)	CC Docket No. 99-198
State Corporation Commission Regarding	)	
Interconnection Dispute With Bell Atlantic-	)	
Virginia	)	

COMMENTS OF CONNECT!

Connect!, by its undersigned counsel, respectfully submits the following comments in response to the "Petition of Global NAPs, Inc. for Preemption of the Jurisdiction of the Virginia State Corporation Commission Pursuant to Section 252(e)(5) of the Telecommunications Act of 1996" ("Petition") filed May 19, 1999.[1]

Connect! is a competitive local exchange carrier ("LEC") that is planning to provide competitive telecommunications services to subscribers in most major markets in Bell Atlantic's region. Connect! has sought to obtain interconnection agreements pursuant to Section 252(i) of the Act[2] as the primary initial mechanism for obtaining interconnection with Bell Atlantic.

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[1] *Public Notice*, CC Docket No. 99-198, DA 99-984, released May 24, 1999. *See also*, *Order*, CC Docket No. 99-198, DA 99-1090, released June 3, 1999.

[2] 47 U.S.C. Section 252(i). Section 252(i) provides that:

> A local exchange carrier shall make available any interconnection agreement, service, or network element provided under any agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

Connect!'s experience has been that rather than an expedited approach, Bell Atlantic has imposed significant barriers to competitive LECs' rights to opt-in to existing agreements.

I. THE COMMISSION SHOULD USE THIS PROCEEDING TO PROVIDE GUIDANCE CONCERNING SECTION 252(i) "OPT IN" RIGHTS

The facts recited by Global NAPs in the Petition provide an excellent example of the difficulties that competitive LECs are encountering in seeking to "opt in" to interconnection agreements pursuant to Section 252(i). Incumbent LECs are to various degrees in many instances treating Section 252(i) requests as little more than the starting point for a full round of negotiations with the requesting carrier. Thus, in this case, Bell Atlantic instead of promptly permitting Global NAPs to opt in to its previous agreement with MFS, countered Global NAPs' request with proposed modifications and conditions that were not part of the MFS agreement. Competitive LECs Section 252(i) opt-in rights cannot be effectuated if incumbent LECs can simply repudiate provisions of previous agreements that they no longer like. Connect! urges the Commission to use this proceeding to clarify as discussed below competitive LECs' Section 251(i) rights and to firmly establish Section 252(i) as an expeditious and efficient mechanism for achieving interconnection agreements.

Connect!'s experience confirms that Global NAPs' experience is not unique. Connect! has been required to file petitions for approval under Section 252(i) in Maryland and Pennsylvania and has been refused the right to opt-in to an agreement in the District of Columbia. Bell Atlantic should not be permitted to simply ignore the clear dictates of the Act.

II. SECTION 252(i) SHOULD BE AN ALTERNATIVE TO NEGOTIATION

In the *Local Competition Order*, the Commission determined that "a carrier seeking interconnection, network elements, or services pursuant to section 252(i) need not make such

requests pursuant to the procedures for initial section 251 requests, but shall be permitted to obtain its statutory rights on an expedited basis."[3] The Commission concluded that "the non-discriminatory, pro-competition purpose of Section 252(i) would be defeated were requesting carriers required to undergo a lengthy negotiation and approval process pursuant to Section 251 before being able to utilize the terms of a previously approved agreement."[4] The Commission left to the states adoption of procedures for making agreements available to requesting carriers on an expedited basis.[5] The Commission also concluded that competitive LECs seeking remedies for alleged violations of Section 252(i) could also obtain expedited relief from the Commission including through the resolution of complaints under Section 208 of the Act.[6]

Connect! urges the Commission in this proceeding to reiterate these determinations of the *Local Competition Order*. The Commission should state again that Section 252(i) is a mechanism by which competitive LECs may obtain an interconnection agreement on an expedited basis, without the need for negotiation, by simply selecting a previously approved interconnection agreement and notifying the incumbent LEC that it is doing so.

Connect! believes that few if any states have adopted procedures that adequately separate the Section 252(i) process from the general section 251 process for negotiating original

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[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No.96-98, First Report and Order, 11 FCC Rcd 15499, para. 1321 (1996) (*Local Competition Order*), *vacated in part, aff'd in part, Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part, rev'd in part AT&T Corp. v. Iowa Utils. Bd.*, 119 S.Ct. 721 (1999).

[4] *Id.*

[5] *Id.*

[6] *Id.*

interconnection agreements. Accordingly, the Commission in this proceeding should remind states that Section 252(i) requires such separate procedures and that states are obligated to establish them.

In order to facilitate development of these procedures by states the Commission, by an interpretive declaratory ruling in this proceeding, should identify the key features of Section 252(i) procedures that would comport with that section. The Commission should determine that under Section 252(i) a competitive LEC may effectuate its Section 252(i) rights by filing with the state commission a letter stating that it is adopting and establishing as its own interconnection agreement an identified previously approved interconnection agreement with the incumbent LEC. The Commission should determine that Section 252(i) requires that the identified interconnection agreement will then, without further action or proceedings of the state commission, become the interconnection agreement between the competitive and incumbent LEC within a brief period of time - say 15 or 30 days - to be determined by the state commission. This approach could help establish the Section 252(i) process as the genuine expedited alternative to negotiation that the Commission in the *Local Competition Order* envisioned as required by Section 252(i).

Connect! stresses that it is not asking that the Commission clarify here any issues or procedures concerning "pick-and-choose." While the above process might well be suitable for competitive LECs seeking to opt-in to specific provisions of previously approved interconnection agreements, the Global NAPs petition concerns an effort to opt-in to an entire agreement, not individual agreement provisions. Thus, the Commission may choose to address pick-and-choose issues elsewhere.

The Commission should also reiterate that where a state has not established separate Section 252(i) expedited procedures, competitive LECs may file Section 208 complaints under "rocket docket" procedures.[7] This will assure that competitive LECs may obtain interconnection agreements pursuant to Section 252(i) on an expedited basis not withstanding the default of a state to implement Section 252(i) procedures.

III. INCUMBENT LEC RIGHTS TO OBJECT TO OPT-INS ARE VERY NARROW

The *Local Competition Order* recognized only two possible qualifications to a competitive LEC's right to opt-in to a previously approved interconnection agreement. The Commission determined that section 252(i) permits different treatment of a competitive LEC attempting to opt-in to a previous agreement if the incumbent LEC's costs of providing the unbundled element or interconnection are greater.[8] The Commission should clarify in this proceeding that there are likely to be very few instances in which the incumbent LEC's cost of providing a particular interconnection arrangement or unbundled network element will differ to such an extent that the competitive LEC may not opt-in to a previously approved interconnection agreement. The Commission should also reiterate that incumbent LECs bear the burden of proving to the state commission that a different treatment based on alleged different costs is justified.[9]

The Commission also found in the *Local Competition Order* that agreements should remain available for opt-in for a reasonable time. Connect! urges the Commission to provide

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7 *See* 47 C.F.R. Section 1.730.

8 *Local Competition Order*, para. 1317.

9 *Id* para 1317.

guidance as to what constitutes a reasonable time in a way that will promote the goals of the Act. The Commission should provide a clarification that generally permits opt-ins to any agreement that is currently in effect. In this connection, Connect! believes that the Virginia State Corporation Commission erred in determining that it was too late for Global NAPs to opt-in to the MFS/Bell Atlantic agreement. Connect! believes that the decision of whether opting-in to an agreement has any utility to the competitive LEC should be left to the requesting carrier. Moreover, under the terms of most agreements, interconnecting carriers continue to operate under expired agreements while they are negotiating a replacement agreement. Permitting a competitive LEC to opt-in closer to the end than the beginning of a previously approved agreement permits the competitive LEC to commence service on an expedited basis, as Section 252(i) intended, and permits both parties to negotiate a new agreement on a going-forward basis. Accordingly, the Commission should provide that Global NAPs should have been permitted to opt-in to the MFS/Bell Atlantic agreement.

IV. BELL ATLANTIC'S TREATMENT OF GLOBAL NAPS' OPT-IN REQUEST WAS UNLAWFUL

Global NAPs' Petition recounts that when it attempted to opt-in to the MFS/Bell Atlantic agreement Bell Atlantic countered that it would only permit Global NAPs to opt-in to that agreement if, *inter alia*, Global NAPs waived any rights to reciprocal compensation for ISP-bound calls, and accepted a lower reciprocal compensation rate. Connect! submits that the only lawful response to Global NAPs' request to opt-in to the previously approved MFS/Bell Atlantic was a prompt concurrence by Bell Atlantic.

As discussed, Section 252(i) is intended to establish an expedited alternative to the negotiation process for a competitive LEC to obtain an interconnection agreement with an

incumbent LEC. Bell Atlantic, however, viewed Global NAPs request as an opportunity to renegotiate the provisions of its previous agreements which it no longer found desirable. Thus, it sought to essentially eliminate its obligation to pay reciprocal compensation for ISP-bound calls.

Connect submits that this conduct is particularly egregious since Bell Atlantic has been unable to prevail before the Commission or before any state commissions, in its view that reciprocal compensation is not due for ISP-bound traffic. In its *Dial-Up Order*, the Commission held that reciprocal compensation for ISP-bound traffic should be decided by state commissions pending adoption of federal rules.[10] Every state in Bell Atlantic's territory that has addressed the issue, both before and after the *Dial-Up Order*, has ruled that intercarrier compensation is due for ISP-bound traffic.[11] Thus, Bell Atlantic is seeking to achieve by withholding interconnection what it has failed to achieve before regulators. As such, Bell Atlantic's conduct is a classic

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[10] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Inter-Carrier Compensation for ISP-Bound Traffic*, CC Docket Nos. 96-98, 99-68, FCC 99-38, released February 26, 1999 ("*Dial-Up Order*").

[11] Since the Commission's February 26 *Dial Up Order*, Delaware has joined the 31 states that have approved the payment of reciprocal compensation. *Application of Global NAPs South, Inc. for the Arbitration of Unresolved Issues from the Interconnection Negotiations with Bell Atlantic-Delaware, Inc.*, Delaware Public Service Commission, Docket No. 98-540, Order No. 5092 (May 11, 1999). In Bell Atlantic territory, New York and Maryland have already affirmed earlier decisions. *Proceeding on Motion of the Commission to Reexamine reciprocal Compensation*, Order Instituting Proceeding to Reexamine Reciprocal Compensation, New York Public Service Commission, Case No. 99-C-0529 (April 15, 1999). Massachusetts vacated its decision because it found it had relied solely on a jurisdictional theory rejected by the *Dial-Up Order*. *Complaint of MCI WorldCom, Inc. Against New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts for Breach of Interconnection Terms Entered Into Under Sections 251 and 252 of the Telecommunications Act of 1996*, Order, Massachusetts Department of Telecommunications and Energy, D.T.E. 97-116-C (May 19, 1999). The Massachusetts Department of Telecommunications and Energy, however, recognized that by vacating its decision it left the issue of intercarrier compensation unresolved.

instance of an incumbent LEC using its control over essential interconnection to disadvantage competitors.

The Commission should also determine that Bell Atlantic's refusal to promptly accept Global NAPs' opt-in request does not fall within the narrow ambit of grounds on which incumbent LECs can treat a requesting opt-in carrier differently than other carriers under previously approved agreements. In particular, the Commission should determine that incumbent LEC fears about reciprocal compensation do not justify refusing to permit-opt in. The fact that under an agreement the incumbent LEC may be required to pay reciprocal compensation for ISP-bound calls is not equivalent to a change in the incumbent LEC's own costs in transporting and terminating calls received from the competitive LEC. Therefore, under the *Local Competition Order*, the fact that an incumbent LEC does not want to pay reciprocal compensation for ISP-bound traffic does not justify a refusal to permit opting-in to previously approved agreements. Thus, Bell Atlantic's proposed modifications to Global NAPs that Bell Atlantic not be required to pay any reciprocal compensation for ISP-bound calls was not based on the view that its own costs of transport and terminating calls had changed but simply reflected that it does not want to pay any reciprocal compensation for this traffic. Accordingly, the Commission should find that Bell Atlantic's rejection of Global NAPs's opt-in request was unlawful.

V. CONCLUSION

Accordingly, Connect! urges the Commission to adopt the recommendations in these comments.

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CERTIFICATE OF SERVICE

I, Candise M. Pharr, hereby certify that on this 15th day of June 1999, copies of the foregoing Comments of Connect! were delivered by hand and first class mail to the following:

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